Court No. 2

In The High Court of Uttaranchal at Nainital.

First Appeal From Order No. 1243 of 2001.
(Old No. 1280 of 2000)

New India Assurance Company Ltd.
through its Assistant Manager
(Legal Cell), 15 Mahatma Gandhi Marg,
Civil Lines, Allahabad.

..... Appellant./Opp.party

Versus

(1)Smt. Savitri Devi widow of late Hari Raj Singh Deupa,
(2)Sachin Deupa son of late Hari Raj Singh Deupa,
both Residents of Trilok Nagar, Do Naharia Haldwani,
Post Bhotia Parao, Tehsil Haldwani, District

..... Claimants-Respondents

(3)Gurnam Singh son of Sri Mewa Ram
R/o Fazalpur, P.S. Bilaspur, Disltrict-Rampur,
(4)Amar Kant Mishra son of Sri S.P. Mishra
R/o 602-D-S3 Ward No.3 Mehrauli, New Delhi.
(5)The oriental Insurance Company Limited
C/o Divisional Manager, Divisional Officer,
Haldwani, Nainital.

..... Defendants/Respondents

Sri R.B. Agarwal, learned counsel for the appellant.

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Dated: 12th Aug. 2004.

Hon'ble P. C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the New India Assurance Company under Section 173 of the Motor Vehicle Act, 1988 against the impugned award dated 03.08.2000 passed by Motor Accident Claims Tribunal, District Judge, Udham Singh Nagar in Motor Accident Claim Case No.143 of 1999, by which the Motor Accident Claims Tribunal *(hereinafter referred to as the Tribunal)* has

awarded Rs. 7,63,000/- as compensation against opposite party No.2-New India Assurance Company alongwith interest at the rate of 12% per annum from the date of application. The amount of compensation shall be paid within two moths from the date of award and if the payment is not made within two months, the New India Assurance Company shall pay interest at the rate of 15% per annum from the date of application till the date of payment.

Brief facts giving rise to the present appeal are, that on 29.01.1999 at 6.30 p.m. deceased Hari raj Singh Deupa was coming from Rudrapur to Haldwai by his Maruti Car No. 6C-6259. When he reached near Tanda Road, Tractor No. UP22-7501, which was coming from opposite direction and being driven rashly and negligently by its driver, hit the Maruti Car of deceased in which the deceased sustained grievous injuries. As a result of injuries, the deceased died on 30.01.1999 in the Hospital. The deceased was aged 49 years at the time of accident. He was an Advocate by profession and his filed claim petition for compensation of Rs. 15,70,000/- due to the death of deceased Hariraj Singh Deupa.

The opposite parties Nos. 1 to 4 contested the claim petition denying all the allegations leveled against them. Opp. party No.2- New Assurance Company did not deny the insurance of the vehicle in question.

On the pleadings of the parties, the following issue were framed by Tribunal:-

(1) *Whether the alleged accident took place on 29.01.1999 at 6.30 p.m. in Tanda Road, P.S. Rudrapur, District-Udham Singh Nagar due to rash and negligent driving of Tractor No. UP 22-*

7501 by its drive in which Hariraj Singh Deupa died? If so, its effect?

(2) *To what amount of compensation the claimants are entitled and from which of the opposite parties?*

(3) *Relief?*

The Tribunal decided issues 1 & 2 favour of claimants and decreed the claim petition accordingly.

The appeal has been pressed on only one ground that the age of the deceased was admittedly 49 years and the Tribunal has applied the multiplier of **'15'** while the multiplier ought to have been applied of **'13'** as per second Schedule appended to Section 163-A of the Motor Vehicles Act, 1988. We find force in the contention of the learned counsel for the appellant. Therefore, we allow the appeal partly and direct the Tribunal concerned to correct the multiplier as applicable in the present case according to Schedule. Rate of interest also appears to be excessive. The Tribunal shall consider only there two aspects while deciding the matter afresh. Rests of the findings are confirmed. The Tribunal concerned shall dispose of the matter within a period of two months from the date of production of certified copy of this order by the New India Assurance Company after issuing notice to the claimants. Copy of this order shall be produced before the Tribunal within fifteen days. Amount deposited in this case shall remain deposited till the decision of the claim petition.

(B.S. Verma, J.) **(P.C. Verma, J.)**

P.Singh